

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

TIMOTHY TOWNSEND,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	2:17cv218-MHT
)	(WO)
WIN-HOLT EQUIPMENT)	
CORPORATION,)	
)	
Defendant.)	

OPINION AND ORDER

This matter is before the court on the United States Magistrate Judge's recommendation that defendant's motion to dismiss be denied. Defendant has filed an objection (doc. no. 44) arguing, in part, that the magistrate judge failed to address the requirements of Rule 15(c) of the Federal Rules of Civil Procedure. While defendant's motion to dismiss cited Rule 15(c) and argued that relation back did not apply, it did not, for the most part, set forth how the particular provisions in Rule 15(c) apply to this case. For example, defendant argued about whether plaintiff

properly substituted it for a fictitious party and whether plaintiff acted with "due diligence" in identifying defendant, without ever stating how these issues relate to any particular subsection of Rule 15(c). (The court assumes the fictitious-party argument was directed to application of Rule 15(c) (1) (A)--allowing relation back where the rules of the relevant state authorize it--but the motion does not make that clear.) It is defendant's responsibility to present its arguments in a clear, straightforward, and well-organized manner.

Accordingly, upon an independent and de novo review of the record, the court concludes that the recommendation should be adopted to the extent that it recommends denial of the motion to dismiss on shotgun-pleading grounds. However, as to the motion to dismiss on statute-of-limitations grounds, the court believes that this matter should be referred back to the magistrate judge for his consideration in the first

instance--so that he can require additional briefing, file a supplemental recommendation addressing the defendant's Rule 15(c) contentions, or take other appropriate action. The court takes no position on whether the defendant's Rule 15(c) argument has merit.

Accordingly, it is ORDERED that:

(1) The United States Magistrate Judge's recommendation (doc. no. 38) is adopted in part, as discussed above.

(2) The motion to dismiss (doc. no. 22) is denied in part to the extent that it requests dismissal on the basis that the complaint is a shotgun pleading, but remains pending on the statute-of-limitations argument.

(3) This case is referred back to the magistrate judge for further consideration in light of this order.

DONE, this the 11th day of May, 2018.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE